

ORIGINAL

ANDRE S. WOOTEN #3887  
Attorney At Law  
Suite 1909, Century Square  
1188 Bishop Street  
Honolulu, Hawaii 96813  
Telephone: (808) 545-4165

Attorney for Plaintiff

**LODGED**

DEC 09 2005  
2:30 pm  
CLERK, U. S. DISTRICT COURT  
DISTRICT OF HAWAII

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

DEC 23 2005

at 2 o'clock and 35 min  
SUE BEITIA, CLERK MJP

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
	)	
Plaintiff,	)	EX PARTE MOTION TO SHORTEN TIME
	)	FOR HEARING ON MOTION FOR STAY
vs.	)	OF EXECUTION OF COLLECTION OF
	)	COSTS BILLED PENDING APPEAL;
CONSOLIDATED AMUSEMENT	)	DECLARATION OF COUNSEL; ORDER
CORPORATION; ALOHA STADIUM	)	GRANTING EX PARTE MOTION TO
AUTHORITY, INC.; and JOHN TELLIS,	)	SHORTEN TIME FOR HEARING ON
General Manager,	)	MOTION FOR STAY OF EXECUTION OF
	)	COLLECTION OF COSTS BILLED
Defendants.	)	PENDING APPEAL; CERTIFICATE OF
	)	SERVICE
	)	
	)	Hearing: _____
	)	Time: _____
	)	Judge: _____

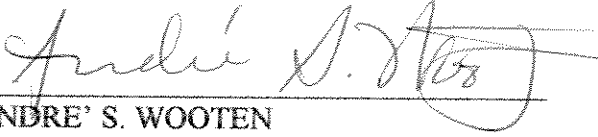
EX PARTE MOTION TO SHORTEN TIME FOR  
HEARING ON MOTION FOR STAY OF EXECUTION  
OF COLLECTION OF COSTS BILLED PENDING APPEAL

Plaintiff GILBERT GITHERE, by and through his attorney, André S. Wooten,  
hereby moves this Court, ex parte, for an order shortening the time for hearing on his Motion for  
Stay of Execution of Collection of Costs Billed Pending Appeal lodged on December 7, 2005.

This Motion is made on the grounds that good cause exists for a shortened time for hearing, as presented herein.

This Motion is based upon Rules 8, 12, 24, 26 and 34 of the Federal Rules of Civil Procedure, Rule 7.5 of the Local Rules, the attached Declaration of Counsel, and such further information as may be presented at a hearing on the Motion.

DATED: Honolulu, Hawaii, Dec 8, 2005

  
\_\_\_\_\_  
ANDRE' S. WOOTEN  
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE-LEK
	)	
Plaintiff,	)	DECLARATION OF COUNSEL
	)	
vs.	)	
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION; ALOHA STADIUM	)	
AUTHORITY, INC.; and JOHN TELLIS,	)	
General Manager,	)	
	)	
Defendants.	)	
_____	)	

DECLARATION OF COUNSEL

ANDRE' S. WOOTEN hereby declares under penalty of perjury as follows:

1. Declarant is the attorney for Plaintiff in the above-entitled matter.
2. This matter is presently on appeal before the Ninth Circuit Court of Appeals as Plaintiff has filed a Notice of Appeal, the Opening Brief for which is not yet due as of December 12, 2005, and a transcript having been ordered but not yet received.
3. Defendant Consolidated Amusement Company prevailed in a summary judgment motion which denied Plaintiff his constitutional right to a jury trial under the Fourteenth Amendment, due process and equal protection clauses and the First Amendment.
4. Plaintiff has a very good chance of prevailing on appeal based upon new Ninth Circuit cases liberally interpreting files which were not cited by the District Court.
5. The Defendant is a multi-state company operating throughout the west coast, if not the entire U.S.A. Indeed, the contract that they lost that was the subject of this case

was worth \$15 million a year and was just a small part of their theater and entertainment concession business statewide and nationwide. Plaintiff, on the other hand, is a small independent businessman, a vendor at the swap meet, for whom the assessment of \$4,000.00 in costs is a very high and hard burden, as he seeks to support his family and keep his business above water.

6. Balancing the equities involved and how much a \$4,000 assessment of cost damages prior to an entire resolution of the case mitigates for a stay of execution of the Bill of Costs of in excess of \$4,000 in this case, as the levy of costs would distinctly and directly hamper Plaintiff's ability to continue to do business and prosecute his appeal and deprive him of the resources to do so and, therefore, limit his constitutional rights to petition for redress of the violation of his constitutional rights in the court.

7. Therefore, based upon the balancing of the effect of immediate payment upon the parties, the burden would fall severely upon Plaintiff to pay costs prematurely, whereas the multi-national corporation, Consolidated Amusement Company, Inc., would scarcely feel the temporary denial or receipt of these funds at all.

8. Defendant Consolidated has filed an Ex Part motion to execute and collect upon the cost bill. And Plaintiff argues that as the appeal is pending such efforts are pre-mature and prejudicial to Plaintiff-Appellant.

Wherefore, Plaintiff respectfully requests that the Court grant this petition for a stay in the execution of collection of the Bill of Costs in this case pending appeal and a final resolution of this matter.

Further, Declarant sayeth naught.



ANDRE' S. WOOTEN

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE/LEK
	)	
Plaintiff,	)	ORDER GRANTING EX PARTE MOTION
	)	TO SHORTEN TIME FOR HEARING ON
vs.	)	MOTION FOR STAY OF EXECUTION OF
	)	COLLECTION OF COSTS PENDING
CONSOLIDATED AMUSEMENT	)	APPEAL
CORPORATION AND ALOHA STADIUM )		
AUTHORITY, INC., John Tellis, General )		
Manager,	)	
	)	
Defendants.	)	
_____	)	

ORDER GRANTING EX PARTE MOTION TO  
SHORTEN TIME FOR HEARING ON MOTION FOR STAY  
OF EXECUTION OF COLLECTION OF COSTS PENDING APPEAL

The Ex Parte Motion to Shorten Time for Hearing on Motion for Stay of Execution of Collection of Costs Billed Pending Appeal having come before this Honorable Court, and the Court having examined the Declaration of Counsel and the records and files herein, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Ex Parte Motion to Shorten Time for Hearing on Motion for Stay of Execution of Collection of Costs Billed Pending Appeal is granted and that the Motion for Stay of Execution of Collection of Costs Billed Pending Appeal shall be heard before the Honorable \_\_\_\_\_, Judge of the above-entitled court, in his/her courtroom in the United States Courthouse, 300 Ala Moana Blvd., Honolulu,

Hawaii, at \_\_\_\_\_ o'clock \_\_\_\_ .m. on \_\_\_\_\_ or as soon thereafter as counsel  
may be heard.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Judge of the Above-Entitled Court

**DENIED**

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

IN UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

GILBERT GITHERE,	)	CIVIL NO. 04-00116 DAE/LEK
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
CONSOLIDATED AMUSEMENT	)	
CORPORATION AND ALOHA STADIUM	)	
AUTHORITY, INC., John Tellis, General	)	
Manager,	)	
	)	
Defendants.	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were delivered upon the  
following parties at their last-known addresses by means of hand delivery on

\_\_\_\_\_

CINDY S. INOUE, ESQ.  
JOHN M. CREGOR, JR., ESQ.  
Department of the Attorney General  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813

Attorneys for Defendant  
ALOHA STADIUM AUTHORITY, INC.



RICHARD M. RAND, ESQ.  
TAMARA M. GERRARD, ESQ.  
Torkildson, Katz, Fonseca, Moore & Hetherington  
700 Bishop St., 15<sup>th</sup> Floor  
Honolulu, Hawaii 96813

Attorneys for Defendants  
CONSOLIDATED AMUSEMENT COMPANY, LTD.  
and JOHN TELLIS

DATED: Honolulu, Hawaii, December 8, 2005

  
\_\_\_\_\_  
ANDRE' S. WOOTEN  
Attorney for Plaintiff